IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.226 OF 2006

The Commissioner of Central
Excise, Thane II, 4th Floor,
Navprabhat chambers, Ranade
Road, Dadar (West),
Mumbai - 400 028 .. Appellant.

V/s.

1. M/s.Amit Engg. Works,
Mahavit Udyog Nagar,
B.P. cross Road No.5,
Bhayander (East),
District : Thane

2. M/s.United Tele-shopping
& Marketing Co. Limited,
Unilazer House, 7,
Marwah Marg, Sakinaka,
Andheri (East),
Mumbai - 400 022. .. Respondents.

Mr.P.S. Jetly with Ms.Anamica Malhotra for the appellant.

Mr.Pankaj Das i/by R & D. Legal for respondent No.1.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 24TH AUGUST, 2007.

ORAL JUDGMENT : (F.I. Rebello, J.)

1. This is an appeal filed by the revenue which raises the following question :

> "Whether the Tribunal is right in Law in holding that the marking of logo of the trader is only for the purpose of quality control and that fixing of the same will not call for denial of the benefit of the Small Scale Exemption under Notification No.8/98-CE dated 02.06.1998 inspite of the specific provisions that the goods bearing brand name/trade name of another person will

not qualify for the said exemption ?"

2. A few facts - A search was conducted on the premises of M/s. United Tele-shopping & Marketing Co. Ltd. (M/s.UTS Limited). Further investigation revealed that the respondents were engaged in the manufacture of brand goods for M/s.UTS Limited. Show cause notice was issued to both the respondents. On 25th June, 2001 order-in-original was passed by the Joint Commissioner of Central Excise confirming the show cause notice. The respondent - M/s.UTS Limited preferred appeal. By order dated 21-1-2002, the Commissioner of Central Excise (Appeals) allowed the appeal. Revenue aggrieved preferred Appeal before CESTAT. On 7th November, 2005 order was passed by Customs, Excise & Service Tax Appellate Tribunal (CESTAT) rejecting the appeal filed by the appellant.

3. The Tribunal in allowing the appeal relied on the judgment in CCE Mumbai II vs. Aarem Enterprises & anr and another 2003(54) RLT CEGAT Mumbai, wherein on similar facts, the Tribunal held that the marking of the logo ‘UTS’ for the purpose of quality control and fixing of the same will not result in denial of the benefit of Small Scale Exemption. The Revenue has preferred the present Appeal against the said order.

4. At the hearing of this appeal, on behalf of the appellant, learned counsel has drawn our attention to Central Excise Application (L) No.7 of 2004 dated 16-11-2006, which this Court has admitted on two questions, of which the first question reads as under :

> "Whether the use of brand name/logo of the marketing company United Teleshopping and Marketing Company Limited as UTS and Total Shopping Network as TSN in a distinctive style by the assessee who is a small scale industrial unit and manufactures goods exclusively for the marketing company involves use of a branch name, and clearances bearing such brand name or trade name of another person namely by marketing company are ineligible for the grant of exemption in terms of paras 4 and 5 of Notification 8/98-CE dated 02/06/1998."

5. On behalf of the revenue, learned counsel in support of their contention has relied on the judgment of the Supreme Court in Commissioner of Central Excise, Trichy V/s. Grasim Industries Ltd., [2005 (183) E.L.T. 123 (S.C.)] as also the judgment of the Madras High Court in Nivaram Pharma Pvt. Ltd. V/s. CEGAT, Madras [2006 (203) E.L.T. 8 (Madras)]. Reliance has been placed on another judgment which and if necessary would be adverted to.

. We may point out on facts that on all pieces sold the words "Slimmer Excer cycles" were marked

prominently. Further the sticker of the logo UTS was affixed on the lower side of the pedal. It was the contention of the respondents that the logo "Excer cycle" displayed prominently on the cycle, while the sticker of the logo of UTS was inconspicuous.

. The learned Commissioner (Appeals) on the evidence held that the respondents herein are the manufacturers and other appellant (UTS) are marketing firm, marketing various other products including the products of the appellant. It thus apparent that the goods contained, both the logo of the respondent, as also the logo of M/s. UTS. In respect of these logos the contention is that it was placed on inconspicuous place and in respect of which the Tribunal held that the marking was for the purpose of quality control.

6. The Supreme Court in Grasim Industries Limited (supra) was considering a case in respect of the very same notification. Apart from the logo of the company, 'Darani Cements Ltd." logo of Grasim Industries Limited was also affixed. The Supreme Court held as under :-

> "As has been set out hereinabove, in this case there is no denial that M/s.Grasim Industries Limited were manufacturer of cement. There is also no denial that the

purpose of using the words :

"Manufactured by Dharani Cements Ltd.
A Subsidiary of Grasim Industries Ltd."

was with an intention of indicating a connection between the product i.e. the cement and M/s.Grasim Industries Ltd. In such cases, clearly the Respondents were using a trade name of some other company with the purpose of indicating a connection in the course of trade between the produce and that person. The Respondents were therefore clearly not entitled to the benefit of the Notification."

7. A learned Single Judge of the Madras High Court in the case of Nivaram Pharma Pvt. Ltd. (supra) held that if monogram or label is affixed in the product owned by other the benefit of the notification would not applicable. The goods manufactured by the Appellant were sold by one marketing concern M/s.Medo Pharm, Madras. The marketing concern's monogram was also affixed on the packing. The notification dated 1-3-1993 says that the benefit would not be available if the manufacturer affixes brand name of another person on the specified goods. The learned Judge of the Madras High Court was pleased to hold that as the Revenue had established on facts that the monogram label is affixed on the product owned by others and as such the benefit of the notification would not be available.

8. In the case at hand, it would be clear that

apart from the logo of the respondent, logo of the marketing firm was also on the product. In our opinion, on facts on record, the test which the respondent had to satisfy in order to get benefits of the notification were not satisfied inasmuch as the goods also contained the logo of the marketing firm. For the aforesaid reasons, in our opinion, the appeal preferred by the revenue has to be allowed.

9. The question of law is answered in favour of the Revenue and against the assessee. The impugned order of the Tribunal as also the order dated 22-1-2002 passed by the Commissioner of Central Excise is set aside and the order in original is restored.

(F.I. REBELLO, J.)

(J.P. DEVADHAR, J.)